IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2009

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.7171 of 2000

The Chief Engineer/Personnel,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 600 002. ..Petitioner

-vs-

1. The Presiding Officer,
   Labour Court,
   Trichy.

2. Thiru.L.Poonchezhian,
   rep. by the Regional Secretary,
   Tamil Nadu Electricity Board,
   Accounts and Executive Staff Union,
   44, Spencer Compound,
   37, Veera Pandiamman Koil Street,
   Dindigul 624 001. ..Respondents

Prayer : The Writ Petition filed under Article 226 of the Constitution of India for issue of Writ of Certiorari to call for the records of the first respondent relating to his award, dated 22.09.1999 and made in I.D.No.50/98 and quash the same as illegal and without jurisdiction.

For Petitioner : M.Vaidyanathan

For Respondents : M/s.R.Meenal for R2

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O R D E R

The Chief Engineer/Personnel, Tamil Nadu Electricity Board is the writ petitioner. The Challenge is to an award dated 22.09.1999 in I.D.No.50 of 1998, on the file of the first respondent. The second respondent workmen raised the industrial dispute before the first respondent stating that when he was working as Junior Assistant (Administration) in the office of the Assistant Executive Engineer/South Sub-Division, Dindigul, he was proceeded with departmentally, which conclude in a punishment of stoppage of

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increment for one year without cumulative effect, by order dated 25.06.1994.

2. The period of punishment commenced on 01.04.1995 and in the meanwhile a panel for promotion to the post of Assistant (Administration) was drawn by the board in the proceedings dated 14.02.1995, in which the second respondent name did not find place. The second respondent is said to have made an appeal to the Chairman of the board on 24.04.1995, against the non inclusion of his name in the promotion panel, dated 20.07.1995, which was not considered, since he was undergoing punishment. Thereafter, the second respondent approached the conciliation officer for resolving the dispute, since the conciliation failed an industrial dispute was raised before the first respondent contending that there was no crucial date fixed for considering promotion to various categories of post and such procedure was not followed while drawing the panel from 1987 to 1995. Further, the second respondent placed reliance upon a memo of the Tamil Nadu Electricity Board dated 26.06.1992, in memo no.12146/P192-1 and contended that he should have been considered for promotion.

3. The Board filed a counter statement and contended that the second respondent was not eligible to be included in the panel dated 18.10.1996 for promotion as Assistant (Administration) for 1996, since on the crucial date i.e. 20th March, he was undergoing punishment. The crucial date has been fixed by the board in BP.Ms (ch) 212 dated 12.06.1987. The first respondent, Labour Court, held that the concept of crucial date was never adhered to earlier and there is no such requirement to be followed and on that ground the second respondent cannot be denied consideration for promotion. The first respondent further held that in view of the memorandum dated 26.06.1992, the first respondent was entitled for being considered and passed an award to effect that the name of the second respondent should be fitted in the promotional panel of Assistant (Administration), dated 18.10.1996, in the appropriate place.

4. Mr.M.Vaidyanathan, learned standing counsel for the Electricity Board contended that the award of the Labour Court is erroneous and against the proceedings of the board and the settled law on the subject. Further, the learned counsel would submit that the memo dated 26.06.1992 has no application to the facts and circumstances of the case and since the second respondent was undergoing punishment the question of considering him promotion does not arise, since in terms of the service regulation, namely regulation 98(1)(b) promotion are based on merit cum ability. Learned standing counsel would further submit that in terms of the board proceedings in BP No.316 dated 27.12.1995, the promotion of persons on whom specific charges have been framed should be deferred till the proceedings are concluded. Therefore, the learned counsel would submit that the second respondent having suffered a punishment is not justified in seeking for considering his case of promotion, when he

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was undergoing punishment. The learned counsel placed reliance on the Judgment of this Court in W.A.443/04 dated 10.08.2005 and W.P.No.8220/01 dated 06.07.2009 in support of his contention.

5. Per contra, Mrs. R.Meenal, learned counsel appearing for the second respondent would contend that the Labour Court after appreciating, the facts and circumstances of the case correctly came to conclusion that the second respondent is entitled for promotion. Further, it was contended that in view of the memorandum dated 26.06.1992, there is no bar for considering the promotion of the second respondent pending disciplinary proceedings. Learned counsel further relied on the decision of this Court in W.A.No.1358/1988 dated 10.08.1992, in support of her contention and prayed that the award of the Labour Court does not call for any interference.

6. I have carefully considered the submissions on either side and perused the materials available on record.

7. The facts, which are not in dispute are that punishment of stoppage of increment without cumulative effect for one year was imposed on second respondent by order dated 25.06.1994. The period of punishment was from 01.04.1995 till 31.03.1996. When the second respondent was undergoing punishment, panel for promotion to the post of Assistant (Administration) was prepared. In terms of BP No.212 dated 12.06.1987, the board fixed up crucial date for consideration of claims of officials for promotion to higher post and issued detailed orders in this regard. In the annexure to the said board proceedings, the crucial date for various post were mentioned and in respect of the post of Assistants in systems/circles, the crucial date was fixed as 20th March.

8. Therefore, when the panel was prepared by taking into consideration the crucial date as 20.03.1996, the second respondent name did not find place in the panel, since he was undergoing the punishment imposed by order dated 25.06.1994. It is to be noted that after the currency of the punishment i.e after 31.03.1996, the second respondent has been promoted to the post of Assistants on 20.10.1997.

9. The Labour Court came to be guided by the fact that such crucial dates were not followed earlier by the board from 1987 to 1995 and there was no reason as to why it needs to be brought in during 1996. Further, the Labour Court placed heavy reliance on the memorandum of the board dated 26.06.1992 and issued a positive direction to include the name of the second respondent at the appropriate place in the panel dated 18.10.1996. The reasons assigned by the Labour Court for passing the impugned award is not sustainable for more than one reason. Firstly, the board is empowered to issue directions in the form of board proceedings for the purpose of regulating activities and business and such proceedings could supplement the statutory Regulations. One such proceedings is BP Ms

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(ch) No 212 dated 12.06.1987 in and by which crucial dates have been fixed for consideration of promotion, in respect of various post. Whether such crucial dates were followed on earlier occasions is of no consequences, since the board decided to adhere to same while drawing the panel for 1996. It is to be noted that there is no challenge to the said BP No.212. In such circumstances the action of the board in fixing up the crucial date cannot be faulted merely on the ground that such crucial dates were not followed during earlier years and this is no ground to state that the same should not have been followed in 1996.

10. Secondly, the memorandum dated 26.06.1992 has absolutely no application to the facts and circumstances of this case, since the said instruction came to be issued pending decision of certain writ petitions before this Court and it pertains to the claim for promotion to higher category by employees against whom disciplinary proceedings were pending. This memorandum is not applicable to the second respondent, since as on the crucial date i.e. 20.03.1996, he was undergoing punishment, which commenced from 01.04.1995 and it was not a case where disciplinary proceedings were pending.

11. In fact, the decision of this Court in W.A.1358/98 dated 10.08.1992 came to be rendered, since it was not stated by the board that under what regulation the claims of those undergoing punishment cannot be considered. Therefore, the Judgment came to be rendered, since no material was placed before the Court. It is to be noted that the board has passed BP No.316 dated 27.12.1995, issuing guidelines for promotion/appointments of board employees against whom charges/enquiry are pending or specific charges have been framed. The said guidelines are to the following effect:-

(i)"In case of pending enquiries including Vigilance Enquiries and in the case of where specific charges have not been framed, promotion/appointment of such persons shall be considered on the basis of their performance as on date of consideration for promotion/appointment as revealed through personal file and seriousness of the punishments if any previously imposed.

(ii)In case where specific charges have been framed or charge sheets have been filed in criminal case promotion/appointment of such persons shall be deferred till the proceedings are concluded."

12. The effect of the said board proceedings came to be considered by the Hon'ble Division Bench in W.A.No.443/2004, wherein, it has been held as follows:-

"In the present case, specific charges had been framed against the writ petitioner and final orders imposing

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punishment had been passed. As the writ petitioner had been punished his name was not included in the panel for promotion. In our opinion, the writ petitioner cannot claim promotion as of right, particularly, when he had been punished for gross-negligence in his duties and poor performance."

"13. Moreover, we fail to understand how the learned single Judge could have himself directed the promotion of the petitioner. The learned single Judge could at most have directed the D.P.C. or the concerned selection authority to have considered (or reconsidered) the question of promotion of the petitioner, but he could not himself take over the function of the D.P.C. or the selection authority, vide U.P.S.R.T.C. Vs. Mohd. Ismail (1991) 3 SCC 239 (vide para-12), State of U.P. Vs. Raja Ram Jaiswal, (1985) 3 SCC 131 (vide para-16), etc."

13. In view of the above reasoning the award of the Labour Court, passed by relying upon the memo dated 26.06.1992 and issuing a positive direction for promotion is wholly unsustainable. This Court in W.P.No.8220/01 dated 06.07.2009 also considered the effect of BP No.316 and held as follows:-

"4. Since the charges were pending as well as the punishment was in currency, the respondents were justified in deferring the petitioner's case for inclusion in the panel and on completion of the punishment, the respondents have rightly included the petitioner's name and gave promotion. There is no illegality in the said order and there is no merit in the writ petition.

14. In view of the above, it has been to be held that the impugned award is unsustainable and wholly without jurisdiction. Hence, this writ petition is allowed as prayed for and the impugned order is set-aside and the petitioner board is directed to consider the claim of the second respondent for promotion to the post of Assistant (Administration) after the expiry of the period of punishment in accordance with law. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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   Labour Court, Trichy.

2. The Chief Engineer/Personnel
   Tamil Nadu Electricity Board,
   800, Anna Salai, Chennai-2.

+ 1 c.c. to Mr. R. Subramanian, Advocate. S.R.No.69822.

W.P.No.7171 of 2000

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